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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

9 **LA MICHOCACANA PLUS ICE**
10 **CREAM PARLOR CORP, a**
11 **California Corporation,**

12 **PLAINTIFF**

13 **v.**

14
15 **WINDY CITY PALETAS, INC., a**
16 **California corporation,**
17 **ECUAMEX PALETAS, INC., a**
18 **California corporation,**
19 **SKY LIMIT ENTERPRISE II, INC.,**
20 **a Nevada corporation,**
21 **KJAM PALETAS INC., a California**
22 **corporation,**
23 **ARTURO MIRANDA, an individual,**
24 **KAYLA RINCON, an individual,**
25 **DIGMEY JARAMILLO, an**
26 **individual; and DOES 1 through 50,**
27 **Inclusive,**

28 **DEFENDANTS**

Case Number: 2:23-cv-00279-CDS-DJA

**STIPULATED DISCOVERY PLAN
AND SCHEDULING ORDER**

**SPECIAL SCHEDULING REVIEW
REQUESTED**

1 Plaintiff La Michoacana Plus Ice Cream Parlor Corp (“LMP” or “Plaintiff”),
 2 and Defendants Windy City Paletas, Inc. (“WINDY CITY”), Ecuamex Paletas, Inc.
 3 (“ECUAMEX”), Sky Limit Enterprise II, Inc. (“SKY LIMIT”), KJAM Paletas Inc.
 4 (“KJAM”), Arturo Miranda (“MIRANDA”), Kayla Rincon (“RINCON”), and
 5 Digmey Jaramillo (“JARAMILLO”), (the “Defendants” and collectively the
 6 “Parties”) by and through their respective counsels, **hereby submit their joint**
 7 **report of the parties’ Rule 26(f) conference, and state their respective proposals**
 8 **concerning the schedule for discovery in this case:**

9 1. Procedural History. On February 22, 2023, Plaintiff filed this action,
 10 alleging that Defendants engaged in trademark infringement based on Defendants’
 11 use of Plaintiff’s trademarks at eight ice cream stores located in San Diego and Las
 12 Vegas. On March 17, 2023, Plaintiff filed a first amended complaint (“FAC”). On
 13 March 30, 2023, Defendants filed a motion to transfer venue or alternatively to
 14 dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2) (“Motion to
 15 Dismiss”); as part of the Motion to Dismiss, Defendants Windy City Paletas, Inc.,
 16 Ecuamex Paletas, Inc., KJAM Paletas, Inc., Kayla Rincon, and Digmey Jaramillo
 17 (collectively, the “Foreign Defendants”) moved to dismiss the First Amended
 18 Complaint (“FAC”), for lack of personal jurisdiction.

19 2. Rule 26(f) Conference. On **May 16, 2023**, Plaintiff’s counsel convened
 20 a telephonic Rule 26(f) conference. The participants were David R. Welch and
 21 George Krboyan on behalf of Plaintiff and David M. Greeley and Jonathan W.
 22 Fountain on behalf of Defendants.

23 3. Rule 26(f) Report. During the Rule 26(f) conference, the parties’ counsel
 24 discussed the following issues:

- 25 a. Fed. R. Civ. P. 26(f)(3)(A) - What changes should be made in the
 26 timing, form, or requirement for disclosures under Rule 26(a),
 27 including a statement of when initial disclosures were made or will
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1 be made? The parties agree that no changes should be made in the
2 timing, form, or requirement for disclosures under Rule 26(a). Rule
3 26(a)(1)(A) disclosures shall be served on or before **June 15, 2023**.

- 4 b. Fed. R. Civ. P. 26(f)(3)(B) - The subjects on which discovery may be
5 needed, when discovery should be completed, and whether discovery
6 should be conducted in phases or be limited to or focused on
7 particular issues? The parties agree that discovery should commence
8 on **May 16, 2023**, the date of the parties' Rule 26(f) conference, on
9 all issues relevant and proportional to the parties' respective claims
10 and defenses, except as addressed below. The Foreign Defendants
11 have challenged personal jurisdiction. And the Defendants may file
12 a compulsory counterclaim, alleging that LMP's business model,
13 which consists of permitting licensees to use LMP's trademarks and
14 providing material support for its licensees' operation of eight ice
15 cream Stores in exchange for the payment of licensing fees and
16 royalties, meets the definition of a "franchise" under the California
17 Franchise Investment Law ("CFIL"), entitling the store operators,
18 under the facts alleged, to rescission of the licensing agreements for
19 all eight Stores in light of LMP's failure to register its franchise
20 offering with the California Department of Financial Protection and
21 Innovation (the "DFPI"). Defendants may add Plaintiff's CEO
22 Ruben Jimenez as a party when filing the counterclaim. The parties
23 do not believe discovery should be conducted in phases or limited to
24 or focused on any particular issues at this time, except that, because
25 of the pending Motion to Dismiss wherein the Foreign Defendants
26 are challenging personal jurisdiction, the parties propose that written
27 discovery be limited to Plaintiff and the non-Foreign Defendants
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(Sky Limit and Arturo Miranda), and that depositions not occur until 45 days after the Court's ruling on the Motion to Dismiss. Written discovery to or from the Foreign Defendants shall be permitted upon the Court's ruling on the Motion to Dismiss.

- c. Fed. R. Civ. P. 26(f)(3)(C) - Any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced? None at this time.
- d. Fed. R. Civ. P. 26(f)(3)(D) - Any issues about claims of privilege or of protection as trial-preparation materials, including--if the parties agree on a procedure to assert these claims after production--whether to ask the court to include their agreement in an order? The parties agree that discovery will require the disclosure of valuable, proprietary, financial, personal, and/or competitive business information. Accordingly, the parties agree to prepare and submit a proposed order governing the discovery, disclosure, and use of confidential information in this case.
- e. Fed. R. Civ. P. 26(f)(3)(F) - Any other orders that should be issued under Rule 26(c) or under Rule 16(b) and (c)? None at this time.

4. Proposed Schedule of the Completion of Discovery. The parties agree to the following case management deadlines:

- a. Discovery Cutoff. The discovery cutoff date shall be **March 29, 2024, which is 365** days from the date Defendants appeared, March 30, 2023. Should this period be insufficient, the parties are amenable to extending the discovery period for a reasonable length of time;
- b. Amending the Pleadings and Adding Parties. The last day to amend pleadings and add parties shall be **December 30, 2023**, which is 90 days before the discovery cut-off date;

- 1 c. Expert Disclosures. The last day to make initial expert disclosures
2 shall be **January 29, 2024**, which is 60 days before the discovery
3 cut-off date. Rebuttal expert disclosures shall be served by **February**
4 **28, 2024**, which is 30 days after the deadline for serving initial expert
5 disclosures;
- 6 d. Dispositive Motions. The last day for filing dispositive motions,
7 including but not limited to motions for summary judgment, shall be
8 **May 28, 2024**, which is 60 days after the discovery cut-off date;
- 9 e. Joint Pretrial Order. The last day for filing the Joint Pretrial Order
10 shall be **June 27, 2024**, which is 30 days after the deadline for filing
11 dispositive motions. In the event dispositive motions are filed, the
12 date for filing the joint pretrial order shall be suspended until thirty
13 (30) days after decision of the dispositive motions or further order of
14 the Court;
- 15 f. Fed. R. Civ. P. 26(a)(3) Disclosures. Unless the Court orders
16 otherwise, the disclosures required by Fed. R. Civ. P. 26(a)(3) and
17 any objections thereto shall be included in the joint pretrial order;
- 18 g. Alternative Dispute Resolution. The parties certify that they have met
19 and conferred about the possibility of using alternative dispute-
20 resolution processes, including mediation, arbitration, and if
21 applicable, early neutral evaluation. The parties may, in the near
22 future, submit a stipulation or joint motion requesting that the Court
23 conduct a magistrate facilitated mediation/settlement conference;
- 24 h. Alternative Forms of Case Disposition. The parties certify that they
25 have considered consent to trial by a magistrate judge under 28
26 U.S.C. § 636(c) and Fed. R. Civ. P. 73 and the use of the Short Trial
27 Program, but respectfully decline this option at this time; and,
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i. Electronic Evidence. The parties certify that they have discussed whether they intend to present evidence in electronic format to jurors for the purposes of jury deliberations. The parties agree to consult the court's website and to contact the assigned judge's courtroom administrator for instructions about how to prepare evidence in an electronic format and to obtain other requirements for the court's electronic jury evidence display system.

5. Discovery Motions.

6. Calculation of Time. Fed. R. Civ. P. 6 shall govern the calculation of time under this Order. For example, if a deadline falls on a day that is a Saturday, a Sunday, or a legal holiday, pursuant to Fed. R. Civ. P. 6(a)(1)(C), the deadline shall run to the next day that is not a Saturday, a Sunday, or a legal holiday.

Dated this 30th day of May 2023.

IT IS SO STIPULATED:

/s/David R. Welch

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Alexander R. Vail
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/s/ David M. Greeley

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Cream Parlor Corp.*

/s/ Jonathan W. Fountain

Jonathan W. Fountain, Esq.
Nevada Bar No. 10351
**HOWARD & HOWARD
ATTORNEYS PLLC**

Attorneys for Defendants

1 **IT IS SO ORDERED** that the parties' stipulated discovery plan and scheduling order (ECF No.
2 20) is GRANTED.

3 Dated: May 31, 2023.
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7 UNITED STATES MAGISTRATE JUDGE
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